

C O P Y

FEB. 2

1954

His Excellency, Hugh Gregg
Governor of New Hampshire
Concord, New Hampshire

Dear Governor:

In accordance with your request for an opinion as to the legal effect of the resolution passed by Governor and Council January 29, 1954, making all commissions now existing or to be appointed on toll roads submit a monthly progress report to the Governor and Council and providing that any awards amounting to \$50,000 or more be submitted to Governor and Council for approval, I advise as follows:

The authority of the Governor and Council relating to the Eastern New Hampshire Turnpike and the Central New Hampshire Turnpike is found at Laws of 1953, chapters 237 and 238. The commissions appointed to lay out said highways by purchase or by exercise of the right of condemnation as provided by statute are established by authority of Revised Laws, chapter 90, as inserted by Laws of 1945, chapter 168, Part 7, section 2. Under this statute the authority of the Governor and Council is limited to "determine, upon hearing, whether there is occasion for the laying out or alteration of a limited access facility including service roads in a location proposed by the highway commissioner, and, if so, shall appoint a commission of three persons who may purchase land or other property in the proposed location and who shall lay out the remainder of such facility, service roads, or alteration thereof, assess the damages sustained by each or land or property taken, and tender payment of the sums awarded. . . ."

Thus it may be seen that, having determined that there is occasion to lay out a toll road in a location proposed by the highway commissioner and having appointed a commission of three persons to lay out the remainder of such facility, the Governor and Council have fulfilled their function, and thereafter the commission.

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as a judicial body, determine the layout of the remainder of such facility, assesses the damages, tender payment of the sum awarded, and, upon completion of its duties, files its report. In making awards our courts have consistently held that it is to be assumed that the commissioners acted upon competent evidence which it was their exclusive province to weigh, and that in the absence of fraud or gross mistake or circumstances preventing the free exercise of honest judgment by the commission, their determination is final. Acting in the name of the state, their properly-arrived-at decision binds the state and right of appeal from their decision is preserved only to the aggrieved land owner.

No authority exists for the Governor and Council to require that awards amounting to \$50,000 or more be submitted to Governor and Council for approval. Laws of 1945, chapter 183, Part 4, section 23, requires that the state shall pay for all land and other property taken or acquired by such commissions and it will be noted that, while approval of the Governor, with the advice of the Council, is a necessary prerequisite for payment for the services and expenses of the commissioners and cost of litigation incurred by the commission in the taking of such land and property, the sum to be paid for the land and property taken or acquired is not subject to that condition. In view of the requirement of the approval of the Governor with the advice of the Council for the payment of services and expenses of the commissioners, it does not appear unreasonable to require commissioners to submit a monthly progress report bearing on those items.

Respectfully,

George F. Nelsen
Assistant Attorney General

GFM:HP